

**PT 98-92**

**Tax Type: PROPERTY TAX**

**Issue: Educational Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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DEPAUL UNIVERSITY  
Applicant

v.

THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

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Docket # 94-16-1702

Parcel Index # See attached

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. John J. Lawlor appeared on behalf of DePaul University.

Synopsis:

The hearing in this matter was held on January 21, 1998, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not the thirty- four Cook County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter qualified for exemption from real estate taxation for the 1994 assessment year.

Mr. Kenneth McHugh, executive vice president and vice president for business and finance of DePaul University (hereinafter referred to as "DePaul") was present and testified on behalf of DePaul.

The issues in this matter include, first, whether DePaul owned the thirty-four condominium parcels here in issue during all or part of the 1994 assessment year; secondly, whether DePaul is a school; and finally, whether the thirty-four parcels listed on the sheet

attached to the Notice of Decision in this matter were either being adapted for school use or actually used for school purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the thirty-four Parcel Index Nos. here in issue were held in trust by American National Bank & Trust Co. of Chicago with G. Davey, Inc., holder of the beneficial interest therein, for the use and benefit of DePaul, from July 1, 1994, through December 31, 1994. Consequently, for real estate tax purposes, DePaul owned the aforesaid parcels from July 1, 1994, through December 31, 1994. It is also determined that DePaul is a school. Finally, it is determined that the thirty-four parcels here in issue were either being adapted for school use or actually used for school purposes during the period July 1, 1994, through December 31, 1994.

It is therefore recommended that the thirty-four Cook County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter be exempt from real estate taxation for 50% of the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the thirty-four parcels here in issue did not qualify for exemption during the 1994 assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On July 25, 1995, the Cook County Board of Appeals transmitted to the Department an Application for Property Tax Exemption To Board of Appeals concerning the thirty-four condominium parcels here in issue for the 1994 assessment year. (Dept. Ex. No. 2)

3. On October 10, 1996, the Department advised DePaul that it was denying the exemption of these thirty-four parcels because said parcels were not in exempt ownership during 1994. (Dept. Ex. No. 3)

4. By a letter dated October 21, 1996, the attorney for DePaul requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on January 21, 1998, was held pursuant to that request.

6. DePaul was founded during 1907 by the Vincentian Order of the Congregation of the Mission of St. Vincent DePaul. It was in 1994, and as of the date of the hearing, an Illinois Not For Profit Corporation. (Tr. p. 18, Dept. Ex. No. 2J)

7. DePaul is a university which offers baccalaureate, masters, and doctoral degrees in the areas of arts and sciences, commerce, law, music, theater and other fields of study. (Tr. p. 18)

8. DePaul is accredited by the North Central Association of Colleges and Schools. (Tr. p. 59)

9. Donations to DePaul are exempt from federal income tax pursuant to Section 501 (c)(3) of the Internal Revenue Code. (Tr. p. 19, Dept. Ex. No. 2N)

10. DePaul has also received an exemption from the Illinois Retailers' Occupation Tax Act and related laws. (Tr. pp. 19-21, Appl. Ex. No. 6)

11. During 1994, of the 5,000 undergraduate students at DePaul 3,500 were commuter students. (Tr. p. 21)

12. The demand for on-campus housing at the Lincoln Park Campus of DePaul has been growing in recent years. (Tr. p. 21)

13. During the period from 1981 through 1994, DePaul financed various building projects by issuing long term tax-exempt bonds. By 1994, DePaul had issued \$125 million in long term tax-exempt bonds and both the board of trustees of DePaul and the bond rating agencies were concerned about DePaul's ability to manage this debt. (Tr. pp. 23 & 24)

14. At the time of the issuing of the last bonds before 1994, the bond rating entity of Standard & Poor's lowered DePaul's bond rating from A to A-. Moody's also lowered DePaul's bond rating from A to B/AA1 at the same time. By 1994, DePaul's lenders were taking the position that DePaul should not place additional long-term debt on its books. (Tr. pp. 25 & 26)

15. DePaul does not have substantial resources in the form of an endowment, and consequently depends on generating tuition revenue to balance its budget. (Tr. p. 24)

16. DePaul has monthly meetings with a group in the Lincoln Park Campus area called the Neighborhood Advisory Committee. A member of that committee lived in one of the thirty-four condominium units in the building here in issue. In January of 1994, that person suggested to DePaul that it might want to purchase the thirty-four condominium units in the building and convert that building into a residence hall. (Tr. pp. 26 & 27)

17. The thirty-four Parcel Index Nos. here in issue identify thirty-four condominium units located in a four-story masonry building located on a lot containing approximately 33,500 square feet. The building is commonly known as 2318 North Sheffield, Chicago, Illinois. The Articles of Condominium ownership concerning that building have been dissolved. (Tr. p.29)

18. During 1994, the strategic master plan of DePaul included providing more student housing at the Lincoln Park campus. The purpose of the plan was to make that campus more of a residential campus than a commuter campus for the students. (Tr. pp. 22 & 23)

19. 2318 North Sheffield is located within an area which the strategic plan of DePaul projects should be owned by DePaul as part of the Lincoln Park campus. (Tr. p. 28)

20. During February 1994, DePaul hired Antunovich & Associates, architects to conduct a study to see if 2318 North Sheffield could be converted into a student residence hall. The results of this study were favorable. (Tr. pp. 27 & 28)

21. On April 19, 1994, American National Bank and Trust Company of Chicago, Trust No. 118192-08 (hereinafter referred to as the "Trust") was created. The holder of the beneficial interest in the Trust is G. Davey, Inc., a Washington corporation (hereinafter referred to as "Davey"). Mr. Greg Davey, owner of Davey, is a real estate consultant to DePaul. He has worked with DePaul since the early 1980s. Davey has been retained by DePaul to help it address its student housing shortage on the Lincoln Park Campus. (Tr. pp.39 & 40, Dept. Ex. No. 2I)

22. Between April 19, 1994, and June 30, 1994, all thirty-four of the condominium units at 2318 North Sheffield were acquired by the Trust. (Appl. Ex. No. 2, Tr. pp. 39 & 40)

23. The purchase of the thirty-four condominium units was financed by the Trust issuing a promissory note and giving a mortgage to DePaul. DePaul then financed these purchases using its borrowed revolving cash flow financing funds. These funds must annually be paid down to comply with the agreement with DePaul's lenders. (Tr. pp. 39-41, Appl. Ex. Nos.7 & 8)

24. On June 1, 1994, before all of the condominium units had been acquired, DePaul commenced construction on the units which had been acquired. (Appl. Ex. No. 2)

25. Contractors, pursuant to directions from DePaul, installed plumbing risers, heating systems, and window air conditioning units. The contractors also upgraded the electrical service, installed a fire alarm system, upgraded the entire plumbing system, and relocated certain walls within the building at 2318 North Sheffield. Extensive painting and redecorating was also done. Finally, new carpeting was installed within the building. The total cost of this adaptation work, which began in June 1994 and was completed before September 15, 1994, was approximately \$600,000.00. (Tr. pp. 31-33)

26. By September 15, 1994, the building at 2318 North Sheffield was fully occupied as a residence hall by DePaul students who were enrolled at DePaul for the fall semester. (Tr. p. 33)

27. Beginning approximately July 1, 1994, this building was owned by the Trust, with Davey, DePaul's real estate consultant, as the holder of the beneficial interest in the Trust. Consequently, I find that the building here in issue was owned by the Trust pursuant to the direction and control of Davey, which held the building in trust for the use and benefit of DePaul. With the building owned by the Trust, under the direction and control of Davey, the financing to acquire the building could be kept off the books of DePaul. (Tr. pp. 34-36)

28. On July 1, 1994, 2318 North Sheffield came under the control of the residence life department of DePaul. The residence life department determines who may occupy the building. The occupancy of the building, since the trust acquired it, is limited to registered DePaul students. If a student is no longer registered for classes at DePaul they must vacate this building immediately. (Tr. p.30)

29. Once 2318 North Sheffield was remodeled and the fall semester students at DePaul had moved in, DePaul sought the services of William Blair, who was DePaul's underwriter, to assist in finding a take-out lender to provide the permanent financing for this building. It was necessary to find permanent financing for the acquisition and adaptation of the 2318 North Sheffield building because the temporary financing had been provided by DePaul's revolving funds lender, who by agreement required that DePaul annually pay down those loans. (Tr. pp. 39-44)

30. The permanent financing was obtained from Aid Association for Lutherans (hereinafter referred to as "Lutherans"). On September 22, 1994, the Trust executed a note to Lutherans for \$6 million. The Trust also executed a mortgage and security agreement to Lutherans, dated September 22, 1994. (Tr. pp. 45 & 46, Dept. Ex. Nos. 2L & 2M)

31. Both the note and mortgage are non-recourse to Davey. (Tr. p. 46)

32. The Trust then leased 2318 North Sheffield to DePaul also on September 22, 1994. The initial term of the lease expires on September 22, 2004, which is also the date that the original note from the Trust to Lutherans is due. (Tr. p. 48, Dept. Ex. No 2R)

33. The Trust, on September 22, 1994, collaterally assigned the lease to Lutherans. The annual rental payments on the lease payable by DePaul to the Trust which have been assigned by the Trust to Lutherans are \$514,000.00, which is exactly the amount of the debt service on the note from the Trust to Lutherans. (Tr. pp. 49 & 50)

34. Pursuant to the collateral assignment of the lease to Lutherans, the Trust gave DePaul notice to pay rent directly to Lutherans. (Tr. pp. 50 & 51, Dept. Ex. 2U)

35. The lease provides that at anytime up to 90 days before the termination date of the lease, DePaul has an irrevocable option to purchase the property at 2318 North Sheffield for the sum of \$6 million, plus any market make-whole adjustment which was due and owing at that time. The market-make whole adjustment provides that Lutherans will recover the entire interest which it would have recovered had the note remained outstanding for its initial term of 10 years. (Tr. pp. 51 & 52)

36. The lease is an absolute triple-net lease. DePaul is required to pay all taxes, assessments, repairs, insurance and other costs of the building. After July 1, 1994, the residence life department of DePaul operated the building as a DePaul residence hall. (Tr. pp. 52 & 53)

37. On September 22, 1994, DePaul also delivered to Lutherans a Leasee Estoppel Certificate and Agreement. This document is an unconditional guarantee on the part of DePaul to pay to Lutherans the balance due on the note plus interest. (Dept. Ex. No. 2V, Tr. p. 55)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 200/15-55 exempts certain property in part as follows:

Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to student residence halls, dormitories and other housing facilities for students . . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of

Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The attorney for DePaul in his brief contends that the “creative financing” entered into by DePaul to prevent the loan obligation for 2318 North Sheffield from appearing on the books of DePaul is like the financing arrangements in Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill.App.3d 96 (4<sup>th</sup> Dist. 1983), and Henderson County Retirement Center, Inc. v. The Department of Revenue, 237 Ill.App.3d 522 (3<sup>rd</sup> Dist. 1992). In each of those cases the Court determined that the exempt organization lessee in a sale and leaseback arrangement was the owner of the property for real estate tax purposes. The Cook County Board of Appeals in its recommendation to the Department concluded that DePaul could not rely on Cole Hospital and Henderson County to qualify for exemption in this case because unlike the lessees in the Cole Hospital and Henderson County cases, it failed to establish that it could not obtain conventional financing.

I agree with the Board of Appeals that DePaul has failed to either allege or establish that it could not obtain conventional financing. I would also point out that in both the Cole Hospital and Henderson County cases the exempt lessee first purchased the property and then sold the real estate to the lender which then leased it back to the exempt organization. In this case, DePaul has never owned any of the Parcel Index Numbers here in issue.

Legal title to the thirty-four condominium Parcel Index Nos. here in issue is held by the Trust. In the case of People v. Chicago Title & Trust, 75 Ill.2d 479 (1979), the Illinois Supreme Court determined that the beneficiary of an Illinois land trust who controlled the property and received all of the benefits was the owner of the property for real estate tax purposes. In reaching this conclusion, the Court stated as follows:

It is a generally accepted principle that taxes are imposed for benefits received. Thus, where the trust beneficiary is recipient of all the benefits of the property and controls the management of the property, he is the party most benefited by the ends of taxation, regardless of who holds the title. Revenue collection is not concerned with the ‘refinements of title’; it is concerned with the realities of ownership.



In this case the beneficiary of the Trust is Davey. Mr. Greg Davey is the owner of Davey and is a long time real estate consultant for DePaul. The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. See People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). See also Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill.App.3d 73 (1<sup>st</sup> Dist. 1989). In this case, Davey as the beneficiary of the land trust, pursuant to direction from DePaul, proceeded with the acquisition of the thirty-four condominium parcels. On or about July 1, 1994, through the Trust with Davey as the beneficiary of the Trust, DePaul was in possession and control of the entire building at 2318 North Sheffield.

Beginning June 1, 1994, contractors for DePaul proceeded to adapt these thirty-four condominium parcels into a student residence hall. This residence hall, by September 15, 1994, was under the control of the residence life department of DePaul. From July 1, 1994, through December 31, 1994, DePaul was in possession and control of 2318 North Sheffield and enjoying the right to control the benefits of that property. In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5<sup>th</sup> Dist. 1981) the Court determined as follows:

The key elements of ownership are control and the right to enjoy the benefits of the property.

In this case, it is clear that between the Trust, Davey, Lutherans and DePaul there is a monthly financing pass-through of interest payments from DePaul to Lutherans. When the option to purchase is exercised the Trust will have the funds to pay off the \$6 million note and mortgage to Lutherans. In the meantime, pursuant to the trust agreement and the note, mortgage, lease and estoppel certificate and agreement DePaul is the party with the obligations to pay the interest on the note and to repay the principal to Lutherans. DePaul is also the party which is in control of 2318 North Sheffield and enjoying the benefits of that building. While the loan to acquire 2318 North Sheffield is off the books of DePaul, pursuant to the foregoing cases, I conclude that DePaul was the owner of 2318 North Sheffield for real estate tax purposes during the period July 1, 1994, through December 31, 1994.

Based on the foregoing I conclude that DePaul is a school.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (1987). Beginning on June 1, 1994, before all of the condominium units had been acquired by the Trust on July 1, 1994, there were contractors in the building at 2318 North Sheffield remodeling and adapting the property so that it could be used as a residence hall by DePaul. By September 15, 1994, the building was actually in use as a residence hall by DePaul. This use continued through December 31, 1994. I therefore conclude that these parcels were either being adapted for school use or actually used for school purposes during the period that the Trust owned all thirty-four condominium units, namely from July 1, 1994, through December 31, 1994.

Based on the foregoing, I recommend that the thirty-four Cook County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter be exempt from real estate taxation for 50% of the 1994 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
December 9, 1998